

From: [Gardner, Monica](#)
To: [Zucker, Audrey](#); [Muench, Gretchen](#); [Lieber, Thomas](#); [Karlen, Delmar](#); [Rodrigues, Cecil](#); [Gray, Heather](#); [Clay, David](#); [Palmer, Leif](#); [Johnson, MaryC](#); [Kyte, Larry](#); [Peycke, Mark](#); [Gonzales, Kristina](#); [Madigan, Andrea](#); [Minor, Dustin](#); [Rongone, Marie](#); [Salo, Earl](#); [Ajl, Diane](#)
Subject: Reasonable Steps/Due Care Compendium Transmittal
Date: Thursday, September 04, 2014 10:18:23 AM
Attachments: [reasonable-steps-compend-2014.pdf](#)

Dear Colleagues:

I am pleased to announce that the Office of Site Remediation Enforcement (OSRE) recently completed the attached "Reasonable Steps/Due Care Legal Compendium: Legal History and Summaries of Relevant Cases." The compendium summarizes approximately 40 court decisions issued through September 2014 that examine the "appropriate care"/"reasonable steps" requirement of CERCLA's bona fide prospective purchaser (BFPP) liability protection and the "due care" requirement of CERCLA's third party defense and innocent landowner liability protection. The compendium complements the reasonable steps discussion found in OSRE's 2003 "Common Elements" enforcement guidance, which states that case law interpreting due care can provide a reference point for analyzing a party's efforts to perform reasonable steps. The document follows recent court decisions on the appropriate care requirement, including the Fourth Circuit's decision in [PCS Nitrogen, Inc. v. Ashley II of Charleston, LLC](#), 714 F.3d 161 (4th Cir. 2013), which upheld a district court's rejection of a developer's BFPP protection because the developer's delay in cleaning out and filling in concrete sumps on its property did not meet a "similarly situated reasonable and prudent person" test.

The compendium can also be found on OSRE's intranet page at: <http://intranet.epa.gov/oeca/osre/doc/reasonable-steps-compend-2014.pdf>. Please be aware that the document is enforcement sensitive and should not be distributed outside the Agency. It is an internal resource intended to assist EPA enforcement personnel with analyzing CERCLA's reasonable steps and due care requirements. If you have any questions regarding matters discussed in the compendium or are aware of any decisions missing from the case summary sections, please contact Craig Boehr at boehr.craig@epa.gov or 202-564-5162. We will update the compendium with new and relevant case law on the reasonable steps and due care requirements.

Best regards,
Monica

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